TABLE OF CONTENTS

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LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE
BUREAU OF FRAUD AND CORRUPTION PROSECUTIONS
JUSTICE SYSTEM INTEGRITY DIVISION

JACKIE LACEY • District Attorney
JOHN K. SPILLANE • Chief Deputy District Attorney
JOSEPH P. ESPOSITO • Assistant District Attorney

SCOTT K. GOODWIN • Director

August 7, 2017

Captain Christopher Bergner
Los Angeles County Sheriff's Department
Homicide Bureau
1 Cupania Circle
Monterey Park, California 91755

Re: Officer Involved Shooting of Donta Taylor
J.S.I.D. File #16-0427
L.A.S.D. File #016-10848-2811-013

Dear Captain Bergner:

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the August 25, 2016, fatal shooting of Donta Taylor by members of the Los Angeles County Sheriff's Department. Our detailed analysis of this incident is contained in the attached memorandum.

Very truly yours,

JACKIE LACEY
District Attorney

SHANNON PRESBY
Head Deputy District Attorney
Justice System Integrity Division

c: Deputy Samuel Aldama, #[redacted]
Deputy Mizrain Orrego, #[redacted]



Hall of Justice
211 West Temple Street, Suite 1200
Los Angeles, CA 90012
(213) 974-3888
Fax: (213) 626-5125
WEBSITE: http://da.co.la.ca.us

MEMORANDUM

TO: CAPTAIN CHRISTOPHER BERGNER
Los Angeles County Sheriff's Department
Homicide Bureau
1 Cupania Circle
Monterey Park, California 91755

FROM: JUSTICE SYSTEM INTEGRITY DIVISION
Los Angeles County District Attorney's Office

SUBJECT: Officer Involved Shooting of Donta Taylor
J.S.I.D. File #16-0427
L.A.S.D. File #016-10848-2811-013

DATE: August 7, 2017

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the August 25, 2016, fatal shooting of Donta Taylor by Los Angeles County Sheriff's Department (LASD) Deputies Samuel Aldama and Mizrain Orrego. We find there is insufficient admissible evidence to prove beyond a reasonable doubt that Deputies Orrego and Aldama did not act in self-defense and in defense of others.

The District Attorney's Command Center was notified of this shooting on August 25, 2016, at approximately 10:00 p.m. The District Attorney Response Team responded to the scene and was given a briefing and walk-through by LASD Lieutenant Steven Jauch.

The following analysis is based on reports prepared by the LASD Homicide Bureau submitted to this office by Detectives Karen Shonka and Wayne Holman. The reports include photographs, audio-recorded interviews of witnesses, surveillance videotape, and radio transmissions.

FACTUAL ANALYSIS

The Initial Contact

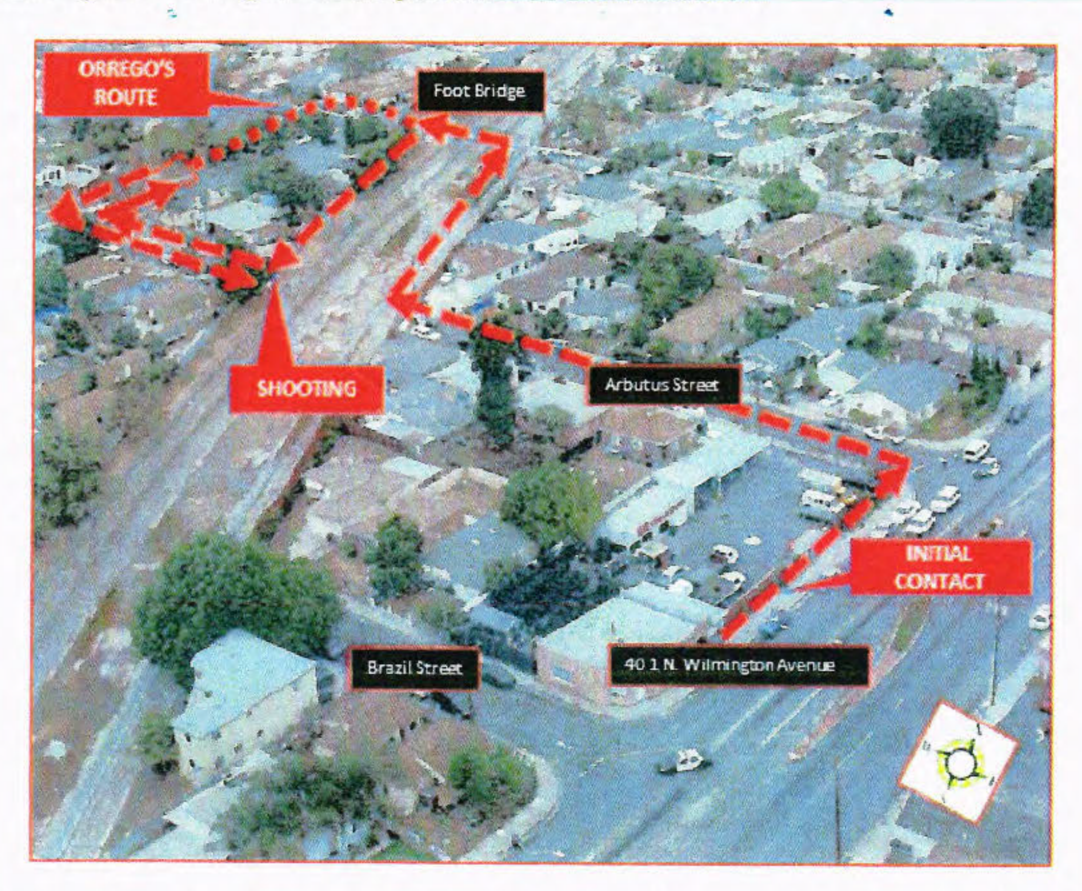
On August 25, 2016, at approximately 8:26 p.m., LASD Deputies Mizrain Orrego and Samuel Aldama were on patrol in Compton and assigned to a gang suppression detail, which is a unit designated to saturate areas that have a high incidence of gang activity. The deputies were in uniform and driving a marked, black and white patrol vehicle. Orrego was driving and Aldama was in the right, front passenger seat.

Donta Taylor, age 31, was walking on Wilmington Avenue near Brazil Street in an area controlled by the "Cedar Bloc Pirus," a notorious criminal street gang that commonly wears red and displays the letter "C" to symbolize "Cedar Bloc." Taylor was wearing a red hat with the letter "C" on the front and appeared to be grabbing his waistband as Orrego and Aldama approached.

Aldama and Orrego drove their patrol car alongside Taylor and asked him if he was on probation or parole.[1] Taylor said, "No, I'm not," reached into his waistband, drew a semiautomatic, stainless steel handgun, and ran. Orrego and Aldama exited their patrol car, ran after Taylor, radioed for backup, and continually yelled commands at Taylor to stop and surrender. In their radio call for backup, the deputies reported that they were in pursuit of a "417" suspect, which is police vernacular for a person with a gun.

The Pursuit Route

Taylor led Aldama and Orrego on a lengthy, roundabout foot pursuit at night and in a poorly lit area, on several residential streets, to a wash, along footpaths along the wash littered with debris, over a bridge, and back-and-forth through a hole in a fence, while holding a gun in his hand. From the beginning of the foot pursuit to the time the shooting occurred, approximately three minutes elapsed. A diagram of the pursuit route is shown below:



Specifically, Taylor ran for approximately one block on Wilmington Avenue, turned left, and ran on Arbutus Street for approximately one block until that street dead ends at a wash. He turned right at the dead end and ran along a footpath parallel to the wash for approximately one block. He turned left and ran over a footbridge that crosses the wash. He turned left at the end of the footpath on the other side of the wash and ran parallel with the wash again, with Orrego and Aldama still chasing and ordering him to stop.

[1] Taylor was on [redacted]

As Taylor crossed the foot bridge, with Aldama and Orrego still close behind, the deputies split up. Aldama continued to chase directly behind Taylor as Orrego, anticipating that Taylor would attempt to run through a hole in a fence to escape, circled around on an adjacent street to block Taylor's escape route.

Taylor ran through the hole as anticipated and ran on Arbutus Street where he came face-to-face with Orrego, who had positioned himself to cut off Taylor.

In the meantime, Aldama stayed on the footpath by the wash in a poorly lit area near the hole in the fence, where he encountered two men. Aldama held those men at gunpoint, not knowing whether they were involved in the incident, as Orrego continued to pursue Taylor alone.

The Help Call

At the beginning of the foot pursuit, Orrego and Aldama immediately radioed that they were chasing a man with a gun and needed help. Numerous backup deputies, supervisory personnel, and an LASD helicopter immediately responded to assist. A transcript of the recording of the radio call, from the point that Aldama and Orrego first reported that they were chasing a man with a gun, to the point they radioed that shots had been fired, is detailed below:

ALDAMA/ORREGO:	(Garbled) patch![2]
DISPATCH:	You're on the patch, Compton.
ALDAMA/ORREGO:	(Garbled) patch! (garbled) patch! (yelling).
DISPATCH:	280 William 2, you're on the patch. Go.
ALDAMA/ORREGO:	(Yelling frantically) ***280 William 2 is gonna be in foot pursuit of a 417 suspect!*** We're gonna be, uh, westbound on Maple from Wilmington! He's going to the wash! (garbled).
DISPATCH:	Westbound Maple from Wilmington into the wash. 417 suspect. Unit and one.
BACKUP DEPUTY:	(Garbled) and one.
DISPATCH:	David unit and one. Additional unit?

[2] LASD'S normal radio operation is called "simplex," which allows deputies to communicate directly with the dispatchers at the communications center. Those communications are also monitored by the deputy's home station. In emergency situations, a deputy requests a "patch," or the dispatcher initiates a patch, which changes the frequency to "duplex" and ties the deputy's home channel with channels of other stations. This allows deputies to communicate directly and more efficiently, over a wider area, with other deputies, assisting units, and the dispatch center. As soon as the emergency has subsided, the deputy will request to "drop the patch" and the dispatcher returns the deputy's radio frequency to simplex mode.

BACKUP DEPUTY: 287 David and one.

DISPATCH: 287 David also responding. Sam unit? (supervisor).

BACKUP DEPUTY: Let's get a containment set up. Let's get a unit on, uh, Spruce and Kemp, uh, Maple and Wilmington....

ALDAMA/ORREGO: (Garbled) gonna cut! Gonna cut through the wash (garbled)!

DISPATCH: Ok. All units hold the air, let me get 280 William 2 only. Let me get suspect description, from all deputies are accounted for, and are you still in foot pursuit?

ALDAMA/ORREGO: Set up a containment west of the wash, on Kemp/Spruce/Poplar.

DISPATCH: Sir, I need a suspect description.

ALDAMA/ORREGO: Gonna be a male black, wearing a white shirt, grey shorts, and a red hat (out of breath).

DISPATCH: Male black, white shirt, grey shorts, red hat. Aero are you on the frequency?

LASD HELICOPTER: (Garbled)

DISPATCH: Aero is two out.

BACKUP DEPUTY: 280 William Sam responding code (lights and sirens).

DISPATCH: 280 William Sam responding code 3.

ALDAMA/ORREGO: Hey, that's enough! I need to set up a containment on the west side of the wash, north of Compton (out of breath)!

BACKUP DEPUTY: I got your containment, brother. Let's do Kemp/Palmer, Kemp/Brazil, Kemp/Arbutus, um, take it up to Poplar and up to Elm and up to Maple on Pacific then on Dwight lets go Spruce, um, Dwight, Spruce/Maple, Spruce/Elm-

DISPATCH: All units hold the air.

BACKUP DEPUTY: Spruce/Poplar, and if we can take it up to Grandee, let's go ahead and take it up to Grandee, um Poplar and Spruce-

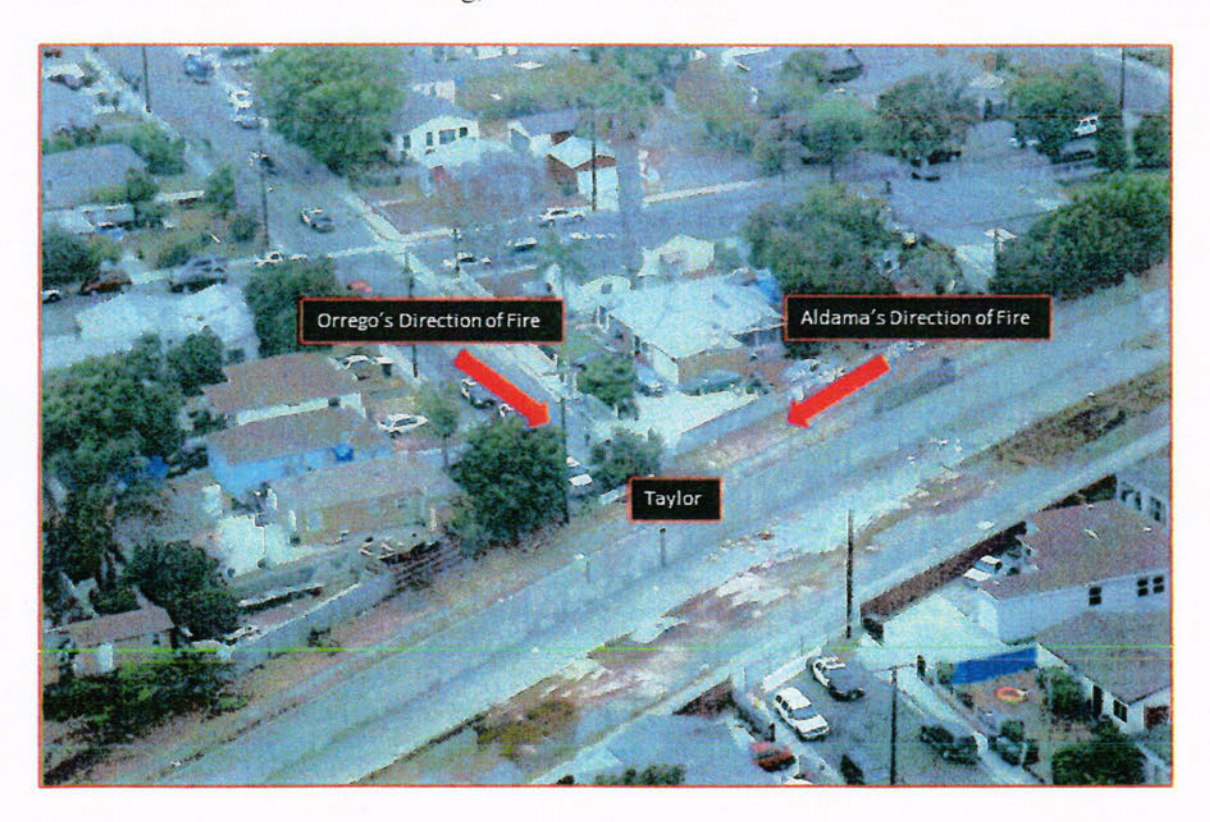
DISPATCH: Units hold the air.

BACKUP DEPUTY: Arbutus (garbled).

DISPATCH:	Units hold the air. 280 William 2 only. 280 William 2.
ALDAMA/ORREGO:	(Garbled) 998! (Garbled) 998! (police code for a shooting has occurred).
DISPATCH:	998. 998. What's your 1020? (location). Units hold the air! 280 William 2 only. What's your 1020?
ALDAMA/ORREGO:	(Out of breath) 998! 998! 998! Suspect down! All deputies accounted for. (Yelling) ***Let me see your hands!***
DISPATCH:	998. Suspect down. All deputies are accounted for. What's your 1020 for fire, sir?
ALDAMA/ORREGO:	(Garbled)(yelling) ***Let me see your hands!***
DISPTACH:	Sir, we're gonna have fire staged Maple and Wilmington, 10-4? Maple, Wilmington?
ALDAMA/ORREGO:	(Out of breath and voice cracking) Units responding. Suspect down. All deputies accounted for, west side of the wash, my car is gonna be on School and Wilmington, can I have a unit please go back to the car.

The Shooting Scene

An aerial photograph showing the location of the shooting, and the positions of Orrego and Aldama at the time of the shooting, are shown below:



A photograph of the position of Taylor's body after the shooting is shown below:



There were three separate volleys of gunshots. Orrego fired two volleys and Aldama fired one volley, as follows:

First, Orrego held Taylor at gunpoint on Arbutus Street and ordered him to stop and show his hands. Taylor did not comply and, instead, reversed direction and ran back toward the wash and the hole in the fence where Aldama was still holding the two other men at gunpoint, which essentially cut off Taylor's escape route along the wash. He could not escape through the hole in the fence because Aldama was there, and there was no other escape route except toward Orrego. Taylor turned toward Orrego and pointed a gun in his direction. Fearing for his life, Orrego fired three shots at Taylor. It is unknown if those shots struck Taylor. When Orrego fired, Aldama and Orrego were positioned on opposite sides of a 90-degree blind corner and could not see each other, but they were within earshot of each other and in communication with dispatch.

The second volley of gunshots occurred when Aldama heard gunshots and saw Taylor immediately run back through the hole in the fence, away from Orrego, and toward him. Taylor was holding something in his hands at his chest area. Fearing that Taylor had just shot Orrego, was still holding the gun he observed earlier, and was attacking him, Aldama fired approximately 10 to 12 rounds at Taylor from his service weapon.

The third volley of gunshots occurred when Orrego heard gunshots and believed that Aldama was involved in a shooting. Orrego ran toward the hole in the fence to assist Aldama and saw Taylor coming toward him again. Fearing that Taylor still had the gun in his possession, Orrego fired two or three rounds at Taylor and saw him fall to the ground.

Orrego and Aldama held Taylor at gunpoint while two other deputies handcuffed and searched him, and then started CPR.

A gun was not recovered from Taylor or the area around him. Gunshot residue testing from Taylor's hands was inconclusive. However, gunshot residue was detected in Taylor's pockets and waistband, which is consistent with him being in possession of a gun at some point.

Statement of Deputy Mizrain Orrego

Orrego provided a voluntary statement to investigators.

Orrego was assigned to a gang suppression detail with Aldama. They were on patrol in an area known to be controlled by the Cedar Bloc Piru criminal street gang. As they were driving on Wilmington Avenue near Brazil Street, Orrego noticed Taylor, who was wearing a red baseball cap with a large "C," a symbol of the Cedar Bloc gang. Orrego and Aldama drove alongside Taylor, and Orrego started to exit the patrol vehicle, intending to contact Taylor. Taylor appeared startled by the deputies' presence, reached into his waistband, drew a stainless-steel handgun, and ran. Orrego and Aldama drew their service weapons and chased Taylor and radioed for help. Taylor led the deputies to the wash, ran down a dirt path, and crossed over a foot bridge. Taylor had the gun in his right hand during the chase. Taylor ran down a dirt path parallel with the wash as Orrego circled around onto a street adjacent to the wash to cut off Taylor's escape route. Taylor went through a hole in a fence and emerged where Orrego was positioned. Taylor was still armed with a handgun. Orrego was approximately 20 yards away from Taylor at that point.

Orrego identified himself and ordered Taylor to drop the gun and show his hands. Taylor looked toward Orrego then grabbed a white fence in front of a residence and started yelling and shaking the fence, apparently trying to get the attention of the occupants. Taylor turned back toward the hole in the fence and the wash, but then turned toward Orrego and pointed the gun at him. Fearing for his life, Orrego fired three rounds at Taylor.

Taylor continued to run toward the hole in the fence as Orrego radioed that there had been a shooting. Orrego heard more gunshots and believed that Aldama had been involved in a shooting with Taylor also. Orrego ran to the wash to assist Aldama and saw Taylor re-emerging from the hole in the fence. Fearing he still had the gun in his possession, Orrego fired two or three rounds at Taylor and saw him fall to the ground. Orrego last saw the gun as Taylor was running toward the wash after he fired the first gunshots.

Statement of Deputy Samuel Aldama

Aldama provided a voluntary statement to investigators.

Aldama was assigned to a gang suppression unit with Orrego. They were driving on Wilmington Avenue and Brazil Street, a known gang area with numerous recent shootings and gang activity.

They were traveling southbound on Wilmington when they observed Taylor, who was wearing a white T-shirt, grey shorts and a red baseball cap. Taylor was grabbing at his waistband, alerting Aldama that he might be in possession of a gun.

Pulling alongside Taylor, Aldama asked Taylor if he was on parole or probation. Taylor responded, "No, I'm not," but appeared startled. Taylor then produced a handgun from his

waistband and ran northbound on Wilmington Avenue. Aldama identified the gun as a stainless steel semiautomatic pistol.

Aldama and Orrego pursued Taylor on foot and broadcast that they were chasing a "417" suspect. Taylor ran from Wilmington Avenue onto westbound Arbutus Street, reaching a dead end at the Compton wash. Aldama could see the gun in Taylor's right hand. The officers pursued Taylor northbound on a dirt path alongside the wash, reaching a footbridge that crosses the wash at Poplar Street. Taylor ran across the bridge and reached the other side of the wash. Taylor then ran along the dirt path next to the wash before continuing through a hole in a chain-link fence on Arbutus Street. As Taylor ran along the wash, Aldama was unable to see if Taylor still had the gun.

While continuing to dispatch their location over the radio, Aldama said he was staged on the dirt path on the west side of the wash near Poplar Street while Orrego took a position at the intersection of Poplar and Kemp Streets to watch for Taylor. Aldama saw two men standing near the hole in the fence along the wash near Arbutus Street and ordered them onto the ground. The men complied. The path along the wash was dark but Aldama was using his flashlight to illuminate the area. Aldama heard a round of gunshots from where he believed Orrego was positioned. Taylor then appeared in the hole in the fence and began to run along the path along the wash.

Taylor ran toward him and was holding something in his hands at his chest area. Fearing that Taylor had shot Orrego and was still holding the gun he observed earlier, Aldama fired approximately 10 to 12 rounds at Taylor, who ran back toward the hole in the fence. Taylor was going in and out of the opening. Taylor then came through the opening toward Aldama again and fell to the ground.

Taylor's [redacted] Incident

Evidence Code section 1101, subdivision (a), prohibits admission of a person's character, whether in the form of opinion, reputation evidence, or evidence of specific acts, to prove a person's conduct on a specified occasion.

However, Evidence Code section 1101, subdivision (b), allows an exception for admission of evidence of a person's prior acts when offered to prove a fact ***other than his or her disposition to commit the contested act***. Such prior misconduct evidence may be offered to prove such facts such as ***motive***, opportunity, ***intent***, preparation, plan, knowledge, identity, the absence of mistake or accident.

Similarly, Evidence Code section 1103(a) holds that, "In a criminal action, evidence of the character or a trait of character (in the form of opinion, evidence of reputation, or evidence of specific instances of conduct) of the victim of the crime for which the defendant is being prosecuted is ***not*** made inadmissible by Section 1101 if the evidence is offered by the defendant to prove conduct of the victim in conformity with the character or trait of character."

Under either theory, that evidence, prior to being admitted, would be subject to a balancing of the probative value of that evidence versus it's prejudicial effect, pursuant to Evidence Code section 352, as part of the court's gatekeeping function.

[redacted]

For the purpose of this evaluation, this evidence must be considered in light of Evidence Code sections 1101(b) and 1103, and District Attorney filing policies, irrespective of whether that evidence is ultimately admitted.[3]

In the prior incident, Taylor was wearing a red hat and a white shirt with red sleeves while walking down the street. [redacted]

Taylor was [redacted] He pled no contest and was [redacted] Taylor was on [redacted] when he ran from Aldama and Orrego.

In sum, the circumstances of this incident are inadmissible to show Taylor's character, or propensity to commit a crime, pursuant to Evidence Code section 1101.

However, pursuant to the exceptions provided for in Evidence Code sections 1101(b) and 1103, Taylor's [redacted] could be admissible, under limited circumstances, not to show any bad character on Taylor's part, but to show his *motive* and *intent* to possess a gun in this case. His status as a [redacted] could also be admissible, also under limited circumstances, not to show any bad character on his part, but to prove his consciousness of guilt, motive, and intent to flee the police and discard any contraband in his possession, in order to avoid a return to jail.

Autopsy

A postmortem examination was performed and the forensic pathologist, Kevin Young, M.D., determined that Taylor had six gunshot wounds to his right upper and lower extremities and his left lateral back. The gunshot wound to Taylor's left back was fatal with a left to right and downward trajectory.

[3] "Before deciding to charge, a deputy shall thoroughly evaluate all available evidence whether such evidence is admissible in court or not." Los Angeles County District Attorney's Office, *Legal Policies Manual*, Section 2.02.03.

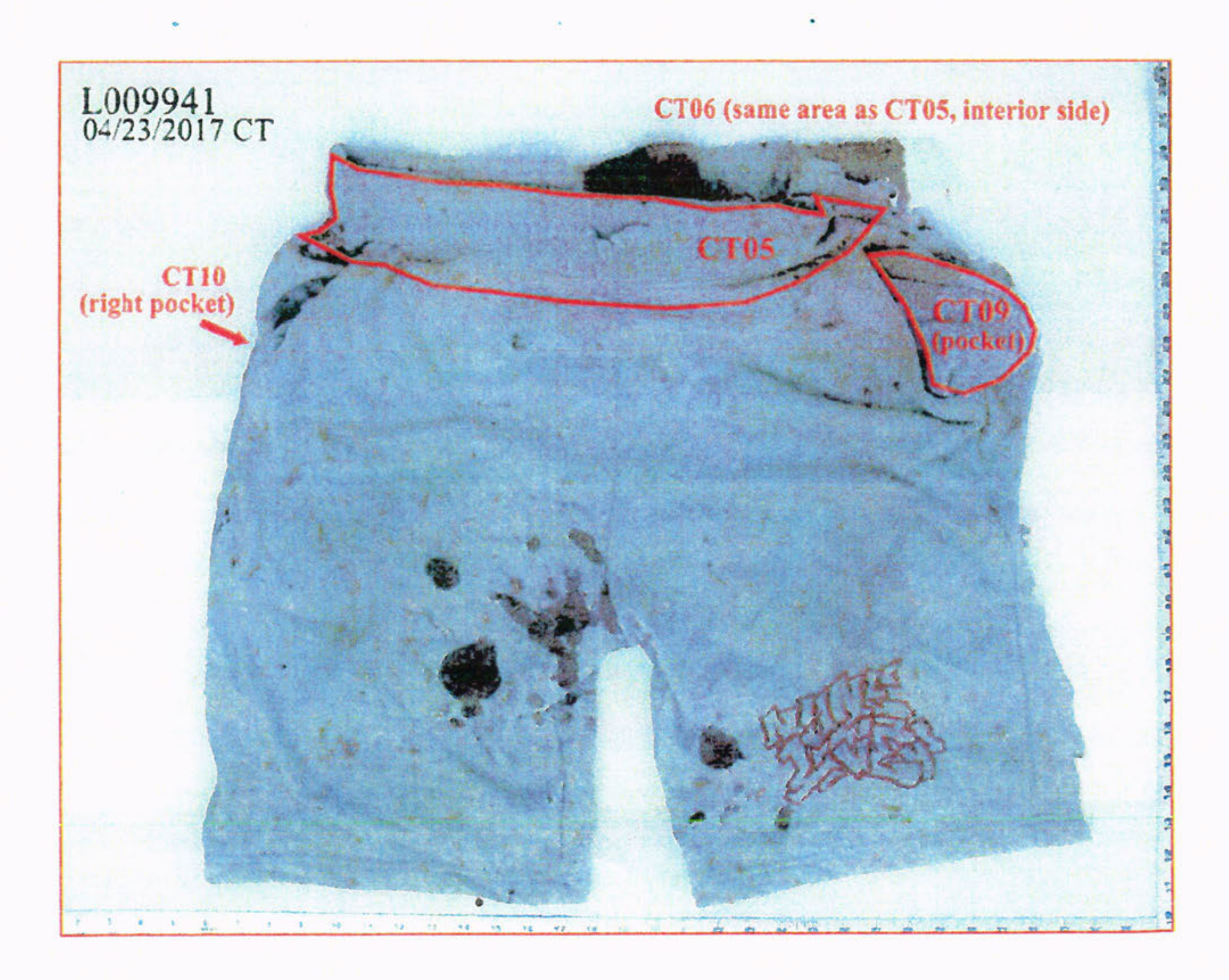
A toxicology analysis was performed and determined that Taylor had the presence of THC and methamphetamines in his bloodstream at the time of his death.

Gunshot Residue Testing (GSR)

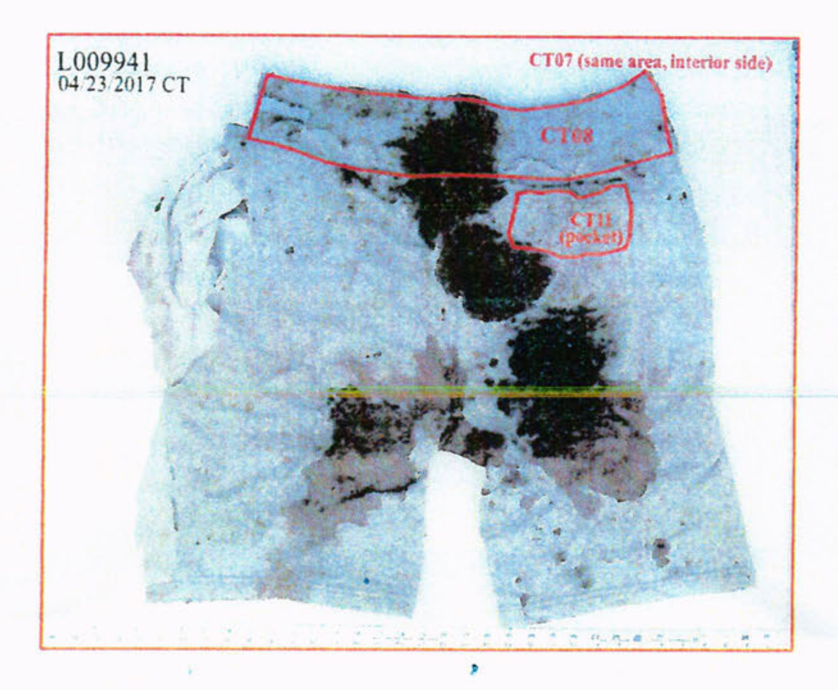
LASD Senior Criminalist Celeste Trujillo analyzed Taylor's underwear and shorts for the presence of gunshot primer residue (also known as gunshot residue or "GSR") and obtained eleven samples from the waistband and pockets of those items.

From those samples, seven particles were located that were either "characteristic" or "consistent" with primer residue from a discharged firearm ("characteristic" particles are primer residue from a discharged firearm and "consistent" particles are found in gunshot primer residue but may also originate from other sources). Those particles are detailed as follows:

- One particle characteristic of gunshot residue was in the front, interior waistband of Taylor's shorts. Two particles characteristic of gunshot residue were inside Taylor's left and right pockets. One particle consistent with gunshot residue was in Taylor's right pocket. A laboratory photograph of Taylor's shorts and the areas where the GSR was located are indicated below:



- Two particles characteristic of gunshot residue were located in the back, interior waistband of Taylor's shorts, as indicated in the area circled in red below:



- One particle characteristic of gunshot residue was recovered from the waistband of the front, exterior of Taylor's underwear as indicated in the area circled in red below:



Los Angeles County Coroner criminalist Debra Gibson analyzed samples taken from Taylor's hands and concluded that there were no gunshot residue particles in those samples, but the findings were inconclusive because Taylor may not have discharged a firearm, Taylor may have discharged a firearm but no gunshot residue was deposited on the areas sampled, or Taylor may have discharged a firearm but the particles were removed by washing, wiping, or other activity before the area was sampled.

Statement of [redacted]

[redacted] was visiting his friend's memorial near the wash where the shooting occurred. He saw the deputies chasing Taylor and running in his direction. One of the deputies approached him and ordered him, at gunpoint, to lie on the ground. He complied. [redacted] was unable to see if Taylor was holding a weapon but he heard the deputies order everyone onto the ground as Taylor ran back and forth through a hole in a nearby fence. [redacted] heard the gunshots but did not see the shooting.

Statement of [redacted]

[redacted] was walking near the wash when the shooting occurred. He saw the deputies chasing Taylor across the wash and saw that Taylor was wearing a white shirt with a red hat, but he was unable to see if Taylor had anything in his hands.

Statement of [redacted]

[redacted] heard yelling and saw the deputies chasing Taylor. The deputies split up, with one chasing after Taylor. A few moments later, he heard gunshots and saw people running from the location. [redacted] was unable to see if Taylor was holding a gun.

LEGAL ANALYSIS

The Law

The people have the burden of proving beyond a reasonable doubt that a killing was not justified. *People v. Banks* (1976) 6 Cal.App.3d 379, 383-384. A killing is justified if it is committed in self-defense or the defense of another. CALCRIM No. 505.

California law permits the use of deadly force in self-defense or in the defense of others if that person actually and reasonably believes that he or others are in imminent danger of great bodily injury or death. Penal Code § 197; *People v. Randle* (2005) 35 Cal.4th 987, 994 (overruled on another ground in *People v. Chun* (2009) 45 Cal.4th 1172, 1201); *People v. Humphrey* (1996) 13 Cal.4th 1073, 1082; *see also, CALCRIM* 505.

If a person acted from reasonable and honest convictions, he cannot be held criminally responsible for a mistake in the actual extent of the danger, when other reasonable men would alike have been mistaken. *People v. Jackson* (1965) 233 Cal.App.2d 639. The test of whether the officer's actions were objectively reasonable is "highly deferential to the police officer's need to protect himself and others." *Munoz v. City of Union City* (2004) 120 Cal.App.4th 1077, 1102.

In sum, the United States Supreme Court has long held that, "The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than the 20/20 vision of hindsight…The calculus of reasonableness must embody allowance for the fact that the police are often forced to make split-second judgments - - in circumstances that are tense, uncertain, and rapidly evolving - - about the amount of force that is necessary in a particular situation." *Graham v. Connor* (1989) 490 U.S. 386, 396-397. "Where the peril is swift and imminent and the necessity for action immediate, the law does not weigh in too nice scales the conduct of the assailed and say he shall not be justified in killing because he might have resorted to other means to secure his safety." *People v. Collins* (1961) 189 Cal.App.2d 575, 589.

Analysis

No criminal liability attaches to Aldama and Orrego's actions unless the prosecution can prove *beyond a reasonable doubt* that they were not actually and reasonably in fear for the safety of themselves or others when they fired their service weapons. *People v. Banks* (1976) 6 Cal. App. 3d 379, 383-384. The prosecution cannot meet that burden in this case.

Although it appears that Taylor was unarmed at the end of the foot pursuit because no gun was located in the area of the shooting, there is nonetheless compelling evidence that Taylor was armed *during* the pursuit, and Aldama and Orrego were reasonable in their beliefs that Taylor continued to be armed at the time of the shooting and was a threat to them when they fired, based on the following evidence:

First, Aldama and Orrego were assigned to a gang suppression unit and were well-aware of the danger posed by gang members in their patrol area, who are often armed. Taylor was walking in an area controlled by the Cedar Bloc Piru gang, was wearing a hat with an emblem and color consistent with the common symbol of that gang, thus was evidence that Taylor was connected with that gang, and it was reasonable to believe that he could be armed.[4]

Second, Taylor, who was on a recent [redacted] and had the presence of THC and methamphetamines in his bloodstream at the time of the shooting, led Aldama and Orrego on a long, perilous foot pursuit down dimly lit streets, around blind corners, and into a poorly lit area along a wash. The risk of the officers being led into an ambush or increasingly dangerous situation, and being isolated from the immediate assistance of other deputies, was palpable. Moreover, Taylor's state of mind, [redacted] and [redacted] relevant factors that are considered, not to show any bad character on Taylor's part, but to prove his *motive* and *intent* to dispose of a weapon, evade the police, and possibly harm them in order to effectuate his escape. Indeed, the California Supreme Court has long held that evidence of flight from a crime scene may be relevant to show consciousness of guilt, and consciousness of guilt is relevant to whether the fleeing individual committed an offense (i.e. possession of a gun by a felon). See *People v. Abilez* (2007) 41 Cal.4th 472, 521–522. The totality of these circumstances corroborates Aldama and Orrego's observations and belief that not only was Taylor in fact armed with a handgun, at least at the beginning of the foot pursuit, but was also highly motivated to escape and possibly harm the deputies or the public.

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[4] It was determined later that Taylor had "CBP" tattooed over his right eye, "CBP" tattooed on his chest, and "Piru" tattooed on his shoulder above a tattoo of a bullet.

Third, Aldama and Orrego both said that Taylor was in possession of a gun, which is corroborated by several factors: 1) the presence of gunshot residue in Taylor's pockets underwear, and waistband in the same area from where Aldama and Orrego said Taylor drew a gun; 2) Taylor's motive to flee and dispose of the weapon to avoid a new conviction and a probation violation and a possible return to jail; and 3) Orrego and Aldama's emergency radio call for assistance, in which they excitedly communicated, via a "patched" radio call to all deputies in the area, that they were pursuing a "417 suspect." That spontaneous and excited utterance by the deputies that they were chasing an armed suspect is inherently reliable.[5] The recording of that radio call, which is detailed above, speaks for itself and will be made a permanent part of the record in this case. The gravity and peril of the situation was evident in the deputies' voices.

Fourth, Taylor was confronted by two uniformed, armed deputies, who pointed their guns at him and ordered him to surrender, yet he persisted in trying to escape, indicating his unpredictable, threatening, and highly motivated behavior. The fact that Aldama and Orrego drew their service weapons and engaged Taylor in a perilous foot pursuit corroborates their statements that they actually believed that Taylor was armed, and posed a threat to themselves and the public.

Fifth, in Aldama and Orrego's emergency radio call, they can be heard shouting excitedly in the background, after they reported that a shooting occurred, "Let me see your hands!" That real-time, recording of the aftermath of the shooting is evidence of the deputies' state-of-mind that they still believed, even after Taylor had been disabled, that he might still be armed.

CONCLUSION

There is compelling evidence in this case that Taylor was armed during the foot pursuit, but may have discarded the firearm during the chase and was unarmed when the shooting occurred.

However, there is insufficient evidence to prove *beyond a reasonable doubt* that Aldama and Orrego did not act in self-defense and the defense of others when they fired their service weapons at Taylor.

When Orrego first fired, he reasonably believed that Taylor was still armed and pointed a gun at him. It is evident now, however, that Taylor was not armed at the time of the shooting and Orrego was mistaken. However, a person is not guilty of a crime if he commits an act under an honest and reasonable belief in the existence of certain facts and circumstances, which, if true, would make such an act lawful. *CALCRIM* 3406; *People v. Raszler* (1965) 169 Cal. App. 3d 1160; citing *People v. Osborne* (1979) 77 Cal. App. 3d 479. When a person commits an act based on a reasonable mistake of fact, his guilt or innocence is determined as if the facts were as he perceived them. *Id.* Here, based on Taylor's behavior, flight, and possession of a gun during the foot pursuit, it was not unreasonable for Orrego to believe that Taylor was still armed at the time of the shooting and continued to present a deadly threat. It is notable that the radio transmissions captured the deputies yelling excitedly, "Show me your hands!" after the shooting, which corroborates the deputies' belief that Taylor continued to be a threat, even after the shooting. In sum, it is well-settled that, in protecting himself or another, a person may use all the force which he believes

[5] Excited or spontaneous statements are generally considered reliable evidence because a truly excited statement allows very little opportunity or incentive for the speaker to speak falsely while making a statement about a recently perceived event. *See* Evidence Code section 1240.

reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to prevent the injury which appears to be imminent. CALCRIM No. 3470. If the person's beliefs were reasonable, *the danger does not need to have actually existed. Id.* (emphasis added). An officer is not constitutionally required to wait until he sets eyes upon a weapon before employing deadly force to protect himself against a fleeing suspect who turns and moves as though to draw a gun. *Thompson v. Hubbard* (2001) 257 F.3d 896, 899.

After Orrego's first volley of gunshots, and in a rapidly unfolding sequence of events, Aldama and Orrego were separated and could not see each other around a blind, 90-degree corner. Aldama heard gunshots and, based on all of the circumstances leading up to the shooting, including Aldama's observation that Taylor had a gun during the foot pursuit, it was not unreasonable for Aldama to believe that Taylor had just shot Orrego. When Taylor emerged through the fence, appeared to have something in his hands, and was moving toward Aldama, it was not unreasonable for Aldama to believe that Taylor was attacking him as well.[6] Orrego then fired again in response to his belief that Taylor was engaging in a deadly attack on Aldama.

Based on a review of the totality of the circumstances in this case, the available evidence is insufficient to prove beyond a reasonable doubt that Deputies Aldama and Orrego did not act in self-defense and in the defense of others. Therefore, we are closing our file and will take no further action in this matter.

[6] Due to the large amount of debris in the area where Taylor fell to the ground, it cannot be determined what may have been in his hands. No gun was found in the immediate area, but black eyeglasses, Taylor's red hat, and numerous other items were in the immediate vicinity.